

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY BREWER,

Defendant and Appellant.

2d Crim. No. B264252
(Super. Ct. No. 15PT-00113)
(San Luis Obispo County)

Anthony Brewer appeals an order determining him to be a mentally disordered offender (MDO) and committing him to the Department of Mental Health (now Department of State Hospitals) for treatment. (Pen. Code, § 2962 et seq.)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 13, 2011, during Brewer's incarceration for an unrelated offense, he assaulted and resisted correctional officers. Brewer took a fighting stance, clenched his fist, struck an officer in the face, and placed another officer in a "headlock." Brewer was convicted of battery and resisting an officer. (§§ 4501.5, 69.) On August 17, 2011, the Riverside County Superior Court sentenced him to two years eight months in prison.

On February 12, 2015, the Board of Parole Hearings determined that Brewer was an MDO pursuant to the criteria of section 2962. As a condition of parole, the board required him to accept treatment from the Department of Mental Health. On February 18,

¹ All statutory references are to the Penal Code.

2015, Brewer filed a petition pursuant to section 2966, subdivision (b) to contest this decision. He personally waived his right to a jury trial and a court trial followed.

Doctor Kevin Perry, a clinical psychologist at Atascadero State Hospital, reviewed Brewer's state hospital records, a probation report describing Brewer's criminal record, and a crime report concerning the underlying offenses. Perry also interviewed Brewer and Brewer's treating psychologist. Perry opined that Brewer suffers from schizoaffective disorder, a severe mental disorder. Perry rested his opinion upon Brewer's auditory hallucinations, grandiose and persecutory delusions, disorganized behavior, suicidal ideation, and pressured speech. In 2008, Brewer had received a previous schizophrenia diagnosis. Perry opined that Brewer's severe mental disorder contributed to the commission of the underlying offenses because, near the time of the offenses, he had experienced active psychotic symptoms and had ceased his medication regimen.

Perry believed that Brewer was in remission at the time of the Board of Parole hearing, but that he could not be kept in remission without treatment. Perry pointed out that Brewer had not followed his medication regime and a court order authorized his involuntary treatment.

Perry testified that Brewer was offered treatment for his severe mental disorder for 90 days or more in the year preceding his parole release date. He also opined that Brewer presented a substantial danger of physical harm to others by reason of his severe mental disorder because he lacks insight into his disorder and the necessity of medications therefor. Perry added that Brewer had not completed a methamphetamine abuse treatment program and his personal plans for release did not contemplate psychological treatment.

The trial court determined that Brewer met the requirements of section 2962, subdivision (d)(1) beyond a reasonable doubt. In ruling, the trial judge stated that she found Perry's testimony credible that Brewer "was not voluntarily taking his medications [and] following his treatment plan."

Brewer appeals and contends that insufficient evidence supports the trial court's finding that his severe mental disorder cannot be kept in remission without treatment. (§ 2962, subd. (a).)

DISCUSSION

Brewer argues that the involuntary treatment order cannot support the trial court's finding regarding remission because he has a constitutional and statutory right to refuse medication. (*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526.) He contends that the prosecution did not establish the nature of his medication regime, the necessity therefor, and the reasons for his refusal to follow the regime.

In reviewing the sufficiency of evidence to support an order made in MDO proceedings, we review the entire record to determine if reasonable and credible evidence supports the decision of the trier of fact. (*People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1096; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.) We view the evidence and draw all reasonable inferences therefrom in favor of the order. (*Ibid.*) We do not reweigh the evidence or substitute our decision for that of the trier of fact. (*Clark*, at pp. 1082-1083.)

Section 2962, subdivision (a)(3) defines the phrase "'cannot be kept in remission without treatment'" to mean that one of four specified acts have occurred during the previous year: a violent act except in self-defense, a serious threat of substantial physical harm on another, intentional property damages, or failure to follow the treatment plan. (*People v. Nelson* (2012) 209 Cal.App.4th 698, 706-707; *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1407.) Section 2962, subdivision (a)(3) provides that, "[i]n determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan."

Sufficient evidence and all reasonable inferences therefrom establish that Brewer did not act as a reasonable person and follow his treatment plan. Perry testified that Brewer lacks insight into his mental illness, claiming that he is not mentally ill and does not need treatment. "A reasonable person, whose mental disorder can be kept in

remission with treatment, must, at minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan." (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.) Brewer's contemplated plans upon release from the state hospital also did not include continuing psychological treatment or medication.

Perry also testified that Brewer decompensated when he did not follow his medication regime. Perry stated that Brewer's psychotic symptoms (punching himself in the face, yelling loudly, jumping around) worsened during those times. Recently, Brewer began following his medication regime and Perry opined that Brewer was in clinical remission. This evidence permits the reasonable inference that Brewer's medication regime was necessary to attain remission.

Brewer does not cite authority permitting a defendant to avoid the requirements of the MDO law by relying upon a statutory or constitutional right to refuse antipsychotic medication. We know of no authority supporting this contention.

The order of commitment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Rita Federman, Judge
Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.